

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In Re:	§	
	§	
DEEP MARINE HOLDINGS, INC.,	§	Case No. 09-39313
Et al.	§	
	§	Jointly Administered
Debtors.	§	Chapter 11

DEEP MARINE 1, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adversary No. 10-03271
	§	
THE DEEP MARINE LIQUIDATING	§	
TRUST (AS SUCCESSOR TO DEEP	§	
MARINE TECHNOLOGY	§	
INCORPORATED, DEEP MARINE	§	
HOLDINGS, INC., DEEP MARINE 1,	§	
LLC, DEEP MARINE 2, LLC, DEEP	§	
MARINE 3, LLC, AND DEEP MARINE	§	
4, LLC); ET AL.	§	
	§	
Defendants.	§	

**GENERAL ELECTRIC CAPITAL CORPORATION’S MOTION TO DISBURSE
UNDISPUTED FUNDS FROM THE REGISTRY OF THE COURT**

General Electric Capital Corporation (“GE”) files this Motion to Disburse Undisputed Funds from the Registry of the Court and, in support thereof, states as follows:

INTRODUCTION

1. On July 9, 2010, the DMT Diamond, owned by Deep Marine 1, LLC (“DM1”), along with other personal property, was sold to Seacor Marine for \$10 million pursuant to the Debtors’ confirmed plan of reorganization. DM1 commenced this

adversary proceeding because GE, Otto Candies, LLC (“Otto Candies”) and The Deep Marine Liquidating Trust, as successor in interest to the Debtors (“Liquidating Trust”) have all asserted competing claims to the sales proceeds of the DMT Diamond.

2. Out of the approximately \$10 million in sales proceeds which have deposited into the Registry of the Court, \$3.4 million is not in dispute because GE, as the holder of a preferred ship mortgage, would be entitled to receive these funds, assuming *arguendo* that Otto Candies and the Liquidating Trust prevail on their claims. Based on GE’s status as the holder of a first preferred ship mortgage on the DMT Diamond, the Liquidating Trust has agreed that these undisputed funds should be paid to GE. Thus, GE is seeking an Order from this Court directing the Clerk of Court to release \$3.4 million from the Registry of the Court to GE.

COMPETING CLAIMS TO THE FUNDS

3. On June 18, 2007, GE purchased a \$15 million loan (“Diamond Loan”) made to by National City Commercial Capital Corporation (“National City”) to DM1 that was secured by DM1’s only asset, the DMT Diamond.

4. On December 4, 2009 (the “Petition Date”), Deep Marine Holdings, Inc., Deep Marine Technology Incorporated, Deep Marine 1, LLC (“DM1”), Deep Marine 2, LLC, Deep Marine, 3, LLC and Deep Marine 4, LLC (collectively, “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code.

5. As of the Petition Date, GE was owed approximately \$13.8 million under the Diamond Loan which was secured by a first preferred ship mortgage on the DMT Diamond and other collateral described in the loan documents. GE believes it is entitled

to virtually all of the sale proceeds of the DMT Diamond under applicable maritime law. The amount of GE's deficiency claim will depend upon the ultimate resolution of the lien priority dispute.

6. On February 19, 2010, Otto Candies filed, among other things, a notice pursuant to 11 U.S.C. 546(b) and proof of claim alleging it held a preferred maritime lien against the DMT Diamond for an amount in excess of \$5.6 million. Otto Candies bases its preferred maritime lien on crew wages and benefits it claims it paid to operate the DMT Diamond. Otto Candies has reduced its preferred maritime lien claim to \$4,291,198.05 and admits that the remainder of its claim is secured by a general maritime lien which is junior to a valid preferred ship mortgage. *See Answer and Amended Cross-Claim of Otto Candies, LLC, to the Amended Complaint to Interplead Funds Etc., Filed by Deep Marine 1, LLC (Doc. No. 94).* GE's preferred ship mortgage is valid and its secured claim against DM1 has been allowed subject to final determination of the amount of the claim. *See Agreed Order Resolving Trustee's Objection to Proofs of Claim Filed by GE Capital Corporation (Doc. No. 967).*

7. The Liquidating Trust has filed cross claims against all of the Defendants asserting ownership claims to certain property owned by DMT aboard the vessel at the time the DMT Diamond was sold. Specifically, the Liquidating Trust alleges that DMT is owed reimbursement of \$500,000 for a Launch and Recovery System ("LARS") that was purchased and installed on the vessel by DMT. The Liquidating Trust is also asserting a surcharge claim totaling \$1,663,091.

8. On October 4, 2010, the Liquidating Trust deposited \$10,046,778.20 into the Registry of the Court, which included (i) net sales proceeds of \$9,915,597 received

for the sale of the DMT Diamond, and (ii) \$113,181.20 for the sale of the bunkers and lubes owned by DMT.

RELIEF REQUESTED

9. The total of Otto Candies' alleged preferred maritime lien for crewman's wages and the Liquidating Trust's surcharge and ownership claims is \$6,454,289.05. Assuming *arguendo* that the claims asserted by Otto Candies and the Liquidating Trust are found to be valid and superior to GE's claim, \$3.4 million is not in controversy.¹ As such, these sales proceeds should be released from the Registry of the Court to GE. The Liquidating Trust does not oppose the relief requested in this motion.

WHEREFORE, General Electric Capital Corporation respectfully requests that the Court issue an Order directing the Clerk of Court to disburse \$3.4 million to GE from the registry of the Court as undisputed funds in this adversary proceeding, and grant GE such other and further relief to which it may be entitled.

¹ GE has advised Otto Candies that it will agree for purposes of the Motion to leave the additional \$461,307.95 in the Registry of the Court to cover additional post-petition interest in the event it is determined that Otto Candies' alleged maritime lien for crew wages and benefits is valid and superior to GE's preferred ship mortgage.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served electronically via the Court's ECF notice on the parties listed below on this 30th day of December, 2010:

/s/ Susan C. Mathews

Susan C. Mathews

* Admitted in the State of Louisiana.

SERVICE LIST

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